

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

JAMES HENRY UTSEY,

Petitioner,

v.

Case No. 5:20-cv-481-Oc-39PRL

SECRETARY, DEPARTMENT
OF CORRECTIONS, et al.,

Respondents.

ORDER OF DISMISSAL WITHOUT PREJUDICE

Petitioner, James Henry Utsey, an inmate of the Florida penal system, initiated this case by filing a pro se Petition pursuant to 28 U.S.C. § 2254 for Writ of Habeas Corpus (Doc. 1). Utsey challenges his 2004 Citrus County convictions for first-degree murder and fleeing and eluding police, for which he is serving a life sentence. This Court previously adjudicated Utsey's federal habeas claims challenging these convictions. See Utsey v. Sec'y, Dep't of Corr., Order (Doc. 15), Case No. 5:06-cv-309-Oc-10GRJ.

In light of the prior adjudication, this Court has no authority to consider Utsey's claims without prior authorization from the Eleventh Circuit Court of Appeals. See 28 U.S.C. § 2244(b)(3)(A) (requiring an order from the "appropriate court of appeals . . . authorizing the district court to consider" a

second or successive application); Insignares v. Sec’y, Fla. Dep’t of Corr., 755 F.3d 1273, 1278 (11th Cir. 2014) (“[A] district judge lacks jurisdiction to decide a second or successive petition filed without [the Eleventh Circuit’s] authorization.”). Utsey has not obtained leave from the Eleventh Circuit to file a successive petition.

If Utsey wishes to proceed on a second or successive habeas petition, he must first seek authorization from the Eleventh Circuit. To the extent Utsey seeks to challenge the conditions of his confinement at Hardee Correctional Institution, he should initiate a civil rights complaint in the appropriate district court.

Because this Court lacks jurisdiction to consider Utsey’s second or successive petition, a certificate of appealability cannot issue in this action. See Williams v. Chatman, 510 F.3d 1290, 1295 (11th Cir. 2007).

Accordingly, it is

ORDERED:

1. This case is **DISMISSED without prejudice**.
2. The **Clerk** is directed to enter judgment dismissing this case without prejudice, terminate any pending motions, and close the case.
3. The **Clerk** is directed to send Petitioner the following forms:
“Application for Leave to File a Second or Successive Habeas Corpus Petition

28 U.S.C. § 2244(b) By a Prisoner in State Custody” and “Complaint for Violation of Civil Rights (Prisoner Complaint).”

DONE AND ORDERED at Jacksonville, Florida, this 13th day of November, 2020.

A handwritten signature in black ink, reading "Brian J. Davis", written over a horizontal line.

BRIAN J. DAVIS
United States District Judge

Jax-6

c:

James Henry Utsey